

## REMARKS

Applicant's representative respectfully requests reconsideration and allowance of the subject application in view of the foregoing amendments and the following remarks.

Claims 1-7, 9-17, and 19 are pending in the application, with claims 1, 11, and 19 being independent. Applicant's representative cancels claims 8, 18, and 20 without prejudice, waiver, or disclaimer of the subject matter. Applicant's representative amends claims 1, 7, 11, and 19 to further clarify features of the claimed subject matter. The original specification and drawings support these claim amendments, for example, see [0013]. Therefore, claims 1-7, 9-17, and 19 are presented and directed to subject matter of the original disclosure.

### CLAIM OBJECTIONS

**Claims 4, 7, and 19** stand objected to because of grammatical and antecedence errors. Claims 4, 7, and 19 are amended to cure the informalities noted in the Office Action. Applicant's representative respectfully requests that the objections be withdrawn.

### CLAIM REJECTIONS UNDER 35 U.S.C. § 102

Claims 1-7 and 19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4355,650 to Beaudry. Applicant's representative respectfully traverses the rejection.

Without conceding the propriety of the stated rejection, and only to advance the prosecution of this application, Applicant's representative amends **independent claim 1**

to include features of dependent claim 8 and to further clarify features of the claimed subject matter. Amended claim 1 now recites an open back weather guard, comprising (emphasis added):

a frame comprising a plurality of interconnected rigid members defining a supporting structure, the frame further comprising:

a pair of opposed horizontal transverse members rigidly attached to a pair of opposed cross members substantially perpendicular to the transverse members forming a substantially horizontal rigid body;

at least one downwardly extending vertical support member connected to the horizontal rigid body, the at least one vertical support member is connected to one of the cross members;

at least one bracket comprising a first end and a second end, the first end is attached to the horizontal rigid body and the second end extends downwardly at an angle  $\theta$ , wherein the second end of the at least one bracket tapers such that it is attached to the vertical support member;

a membrane attached to the frame defining an opening, wherein the membrane forms a shield against environmental conditions inside the opening; and

*a fastener for removeably attaching the weather guard to at least one of an enclosure or an exterior portion of the structure around an opening.*

Applicant's representative respectfully submits that the Office has failed to show that Beaudry discloses such a weather guard.

### **The Office Fails to Show that Beaudry Discloses the Claimed Weather Guard**

The Office has failed to show that Beaudry discloses the claimed weather guard. Rather, Beaudry describes a portable and collapsible shelter including a unique anchoring system which also serves as a digging tool and tie rod. *See Abstract.*

In contrast, amended claim 1 now recites “*a fastener for removeably attaching the weather guard to at least one of an enclosure or an exterior portion of the structure*

*around an opening.”* Applicant’s representative notes that the Examiner agreed during the above-referenced interview that the cited reference did not appear to disclose this claim element. The Examiner also indicated that she would review the reference and update her search. Applicant’s representative thanks the Examiner for this preliminary indication. Therefore, for at least these reasons, Applicant’s representative respectfully submits that claim 1 is not anticipated by Beaudry.

**Dependent claims 2-7 and 9** depend directly from independent claim 1 and thus are allowable as depending from an allowable base claim. Dependent claims 2-7 and 9 are also allowable for their own recited features that, in combination with those recited in claim 1, are not shown by the Office to be disclosed in Beaudry.

Thus, Applicant’s representative respectfully submits that the Office has failed to show that each and every feature is disclosed, and thus the claims are not anticipated by Beaudry. Applicant’s representative respectfully requests that the § 102 rejections be withdrawn.

### **Independent Claim 19**

Without conceding the propriety of the stated rejection, and only to advance the prosecution of this application, Applicant’s representative amends **independent claim 19** to include features of dependent claim 20 and to further clarify features of the claimed subject matter. Amended claim 19 now recites a weather guard, comprising (emphasis added):

means for supporting, comprising:  
a pair of opposed transverse horizontal means for holding  
the membrane in a horizontal position rigidly attached to a  
pair of opposed cross means for holding substantially

perpendicular to the opposed transverse horizontal means for holding;

means for shielding attached to the means for supporting defining an opening, wherein the means for shielding also defines a first tapered side extending downwardly and a second tapered side extending downwardly; and

*means for mounting a feature for removeably attaching the frame to an enclosure or a structure.*

Applicant's representative respectfully submits that the Office has failed to show that Beaudry discloses such a weather guard and is allowable for reasons similar to those discussed above with respect to claim 1. For example, the Office has failed to show that Beaudry discloses "*means for mounting a feature for removeably attaching the frame to an enclosure or a structure,*" as recited in Applicant's amended claim 19. Applicant's representative notes that the Examiner agreed during the above-referenced interview that the cited reference did not appear to disclose this claim element. The Examiner also indicated that she would review the reference and update her search. Applicant's representative thanks the Examiner for this preliminary indication. Therefore, for at least these reasons, Applicant's representative respectfully submits that claim 19 is not anticipated by Beaudry. Applicant's representative respectfully requests that the rejection of Claim 19 be withdrawn.

#### **CLAIM REJECTIONS UNDER 35 U.S.C. § 103**

**Claims 10 and 11-18** stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 4,355,650 to Beaudry in view of U.S. Patent No. 4,884,589 to Simpson. Applicant's representative respectfully traverses the rejection.

Dependent claim 10 recites “*the weather guard of claim 1, wherein the membrane is a plurality of impermeable membranes in the form of individual panels that are separately attached to the frame.*”

As explained above with respect to the rejection under §102, Applicant’s representative submits that Beaudry fails to disclose the features of independent claim 1. Dependent claim 10 depends directly from independent claim 1 and is allowable by virtue of this dependency. This dependent claim is also allowable for its own recited features that, in combination with those recited in claim 1, is not disclosed, taught, or suggested by Beaudry.

Simpson fails to compensate for the deficiencies of Beaudry. Rather, Simpson relates to a portable shelter or tent enclosure having a self-supporting frame structure that may be pivotally erected and collapsed for supporting a fabric cover. *See* Col. 1, lines 49-52. The enclosure may be erected so as to directly enclose the equipment or surround the equipment. *See* Col. 3, lines 12-13.

Accordingly, Applicant’s representative submits that the evidence relied upon by the Office does not support the rejections made under §103. Applicant’s representative requests reconsideration and withdrawal of the stated §103 rejection of these claims.

### **Independent Claim 11**

Without conceding the propriety of the stated rejections, and only to advance the prosecution of this application, Applicant’s representative amends **independent claim 11** to include features of dependent claim 18 and to further clarify features of the claimed

subject matter. Amended claim 11 now recites a closed back weather guard, comprising (emphasis added):

a frame comprising a plurality of interconnected rigid members defining a supporting structure, the frame further comprising:

a pair of opposed horizontal transverse members rigidly attached to a pair of opposed cross members substantially perpendicular to the transverse members forming a substantially horizontal rigid body;

at least one downwardly extending vertical support member connected to the horizontal rigid body, the at least one vertical support member is connected to one of the cross members;

at least one bracket comprising a first end and a second end, the first end is attached to the horizontal rigid body and the second end extends downwardly at an angle  $\theta$ , wherein the second end of the at least one bracket tapers such that it is attached to the vertical support member;

a membrane attached to the frame defining an opening, wherein the membrane forms a shield against environmental conditions inside the opening;

*first and second back panels forming a back cover of the weather guard, wherein the first and second back panels are adapted to releasably fasten to each other; and*

*a fastener for removeably attaching the weather guard to at least one of an enclosure or an exterior portion of the structure around an opening.*

Applicant's representative respectfully submits that no such closed back weather guard is disclosed, taught or suggested by Beaudry and/or Simpson.

#### **References Fail to Teach or Suggest Claimed Closed Back Weather Guard**

The Office has failed to show that Beaudry and/or Simpson disclose, teach or suggest the claimed closed back weather guard.

Applicant's representative agrees with the Office that Beaudry fails to teach first and second back panels forming a back cover of the weather guard, wherein the first and second back panels are adapted to releasably fasten to each other. *See* Office Action, page 5. However, Simpson fails to compensate for the deficiencies of Beaudry. For example, the Office cites Fig. 10 of Simpson as teaching or suggesting "including releasable panels in the cover as windows, doorways, or the like in sections of the cover to increase viewing area when the door or window means is open, or provide privacy when closed." *See* Office Action, page 5. However, nowhere in these pages does Simpson disclose, teach, or suggest the claimed closed back weather guard. Rather, Simpson relates to a portable shelter or tent enclosure having a self-supporting frame structure that may be pivotally erected and collapsed for supporting a fabric cover. *See* Col. 1, lines 49-52. The enclosure may be erected so as to directly enclose the equipment or surround the equipment. *See* Col. 3, lines 12-13.

In contrast, Applicant's amended claim 11 recites "*first and second back panels forming a back cover of the weather guard, wherein the first and second back panels are adapted to releasably fasten to each other, and a fastener for removeably attaching the weather guard to at least one of an enclosure or an exterior portion of the structure around an opening.*" To assist the Office in appreciating the claimed subject matter, Applicant's representative provides the following illustrative excerpt.

**Applicant's Specification, paragraph [0013]**

The back panels 42A, B are fastened by way of a releasable fastener 44 provided in between the two back panels 42A, B. The releasable fastener 44 allows the back panels 42A, B to conform around equipment located on a structure.

Thus, Beaudry and/or Simpson, alone or in combination, do not disclose, teach, or suggest the claimed subject matter. Accordingly, Applicant's representative submits that the evidence relied upon by the Office does not support the rejections made under § 103, and Applicant's representative respectfully requests that the § 103 rejection be withdrawn.

**Claims 12-17** depend directly or indirectly from independent claim 11 and are allowable by virtue of this dependency, as well as for additional features that they recite. Applicant's representative also respectfully requests individual consideration of each dependent claim.

Applicant's representative respectfully submits that the cited references do not render the claimed subject matter obvious and that the claimed subject matter, therefore, patentably distinguishes over the cited references. For all of these reasons, Applicant's representative respectfully requests the § 103 rejection of these claims should be withdrawn.



CONCLUSION

Claims 1-7, 9-17, and 19 are in condition for allowance. Applicant's representative respectfully requests reconsideration and prompt allowance of the subject application. If any issue remains unresolved that would prevent allowance of this case, the Office is requested to contact the undersigned attorney to resolve the issue.

Respectfully submitted,

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Date: \_\_\_\_\_

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